(114)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO.2749 OF 2006

PETITIONERS

1. Vishnu Dayal, S/o. Late Roopchand, aged about 61 years.
2. Vijay Kumar, S/o. Late Roopchand, Aged about 51 years.
3. Shiv Kumar, S/o. Late Roopchand, Aged about 46 years.
4. Shyam Sunder, S/o. Late Roopchand, Aged about 41 years.
5. Anand Kumar, S/o. Late Roopchand, Aged about 36 years.

All residents of Sakti, Tehsil: Sakti, District: Janjgir-Champa, Chhattisgarh.

Vs.

RESPONDENTS

1. Shankarlal Agrawal, S/o. Gyaniram Agrawal, Aged about 67 years.
2. Jagdish Prasad, S/o. Ramphal Agrawal, Aged about 46 years.

Both residents of Sakti, Tehsil: Sakti, District: Janjgir-Champa, Chhattisgarh.

3. Additional Collector, Janjgir-Champa, Chhattisgarh.
4. Board of Revenue, Chhattisgarh at Bilaspur, Chhattisgarh.

Present : Shri Sanjay K. Agrawal with Shri Sourabh Sharma,learned counsel for the petitioners.
Shri Sanjay S. Agrawal, learned counsel for respondents 1 and 2.
Shri Utkarsh Verma, learned Dy. G.A. for respondents 3 and 4.

ORAL ORDER

(Passed on 13th November, 2006)

The land comprised in Khasara No.369/1 area 11.26 acres was purchased by the petitioners herein, according to them, after obtaining permission required under Section 165 (6) of Chhattisgarh Land Revenue Code, 1959 (for short 'the Code'). Sale instruments are also registered.

When the matter stood thus, an application was moved under Section 32 of the Code before the Additional Collector, Janjgir-Champa contending that the petitioners herein obtained permission under Section 165 (6) of the Code and the sale instruments are registered by playing fraud. The Additional Collector, Janjgir-Champa having entertained that application under Section 32 of the Code, issued notices to the petitioners herein. The petitioners put in appearance before the Additional Collector and filed an application contending that the Additional Collector lacks jurisdiction to go into the validity of the permission under Section 165 (6) of the Code and the sale deed in the application filed under Section 32 of the Code. The Additional Collector not agreeing with the above contention by order Dated 07.01.2006 rejected the application. Feeling aggrieved by the said order, the petitioners preferred Revenue Revision to the Board of Revenue. The Board of Revenue by its order dated 01.03.2006 summarily rejected the revision. Hence, this writ petition under Articles 226 and 227 of the Constitution of India.

(2) I heard learned counsel for the parties. Shri Sanjay K. Agrawal, learned counsel appearing for the petitioners would contend that since in earlier proceedings, the validity of the permission and sale of the land was agitated between the same parties and since it has culminated in the registered sale-deed, the Additional Collector lacks power under Section 32 of the Code to go into the validity of the permission under Section 165 (6) of the Code and the validity of the sale-deed again, and such a power could not be culled out from the provisions of Section 32 of the Code.

(3) At the time of hearing, a translated copy of the application made under Section 32 of the Code made available to me. The same shall form part of the records. I have perused the same. In the said application it is alleged that the petitioners got the sale-deed registered in their favour after obtaining the permission under Section 165 (6) of the Code by misappropriating the maps, manipulating directions, boundaries etc. and by playing fraud.

(4) Section 32 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Revenue Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Code. (Emphasis supplied by the Court). The provisions begins with a *non-obstante* clause. Therefore, the provisions of Section 32 have overriding effect. The pleadings of the contesting respondents themselves without proof could not justify exercising the power under Section 32 of the Code in favour of them. Whether a case is made out to exercise the power in favour of the contesting private respondents under Section 32 of the Code would depend upon the evidence that may be led before the Additional Collector in the course of enquiry, but, it cannot be said that the Additional Collector inherently lacks jurisdiction to entertain the application filed under Section 32 of the Code. The question whether before granting permission under Section 165 (6) of the Code, all relevant materials and documents were placed before the authority competent to grant the permission and the sale of the land are in accordance with law, are all questions to be gone into by the Additional Collector in the enquiry envisaged. At this stage, it cannot be said that the contesting private respondents are not entitled to

117

move an application under Section 32 of the Code pleading fraud on the part of the purchasers or to plead that the permission secured under Section 165 (6) of the Code is vitiated on account of the non-consideration of relevant materials. Above all, I am of the considered opinion that no prejudice would be caused for the petitioners by participating in the enquiry that may be conducted by the Additional Collector on the application filed under Section 32 of the Code. On the other hand, if the application filed by the other side under Section 32 of the Code is foreclosed for want of jurisdiction there is likelihood of failure of justice, if there is any merit and substance in the allegation made by the contesting private respondents. Looking from any angle, this is not a fit case where the Court should foreclose the enquiry by the Additional Collector on the application filed by the contesting private respondents under Section 32 of the Code.

(5) In the result, the writ petition is dismissed. The petitioners are granted three weeks' time to file their statement of objections to the main application filed under Section 32 of the Code. The Additional Collector, Janjgir-Champa is directed to dispose of the application as expeditiously as possible, in any event, within a period of six months from the date of receipt of a copy of this order. No costs.

Sd/-
Chief Justice